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In the Supreme Court of the United States

OCTOBER TERM, 1953

No. 337

UNITED STATES OF AMERICA, PETITIONER

v.

ELIZABETH C. MORRELL

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

The Acting Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit, entered in the above-entitled cause on May 16, 1953.

OPINIONS BELOW

The opinion of the United States District Court for the District of Maryland (R. 7–16) is reported at 107 F. Supp. 658. The opinion of the Court of Appeals (R. 18–24) is reported at 204 F. 2d 490.

JURISDICTION

The judgment of the Court of Appeals was entered on May 16, 1953 (R. 25). By order of Mr. Justice Clark, dated August 3, 1953, the time for filing a petition for writ of certiorari was

extended to September 14, 1953 (R. 27). The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Whether, under Section 602 (n) of the National Service Life Insurance Act of 1940, as amended, the Veterans Administration is required to apply a refund premium credit retroactively toward the payment of premiums not otherwise paid by the insured, where the existence of the credit was not ascertained until after the insured's death and the amount of the credit, if applied to the unpaid premiums, is sufficient to continue the policy in effect until the insured's death.

STATUTE INVOLVED

Section 602 (n) of the National Service Life Insurance Act of 1940, c. 757, 54 Stat. 1008, 1011, as amended by the Act of July 11, 1942, Sec. 5, 56 Stat. 658; by the Act of September 30, 1944, Sec. 7, 58 Stat. 764; and by the Act of August 1, 1946, Sec. 7, 60 Stat. 784, 38 U. S. C. 802 (n), provides as follows:

> Upon application by the insured and under such regulations as the Administrator may promulgate, payment of premiums on such insurance may be waived during the continuous total disability of the insured, which continues or has continued for six or more consecutive months, if such disability commenced (1) subsequent to the date of his application for insurance, (2) while the

insurance was in force under premium-paying conditions, and (3) prior to the insured's sixtieth birthday: *Provided,* That upon application made within one year after the date of enactment of the Insurance Act of 1946 [August 1, 1946] the Administrator shall grant waiver of any premium becoming due not more than five years prior to the date of enactment of such Act which may be waived under the foregoing provisions of this subsection: *Provided further,* That the Administrator, upon any application made subsequent to one year after the date of enactment of the Insurance Act of 1946, shall not grant waiver of any premium becoming due more than one year prior to the receipt in the Veterans' Administration of application for the same, except as hereinafter provided. Any premiums paid for months during which waiver is effective shall be refunded. The Administrator shall provide by regulations for examination or reexamination of an insured claiming benefits under this subsection, and may deny benefits for failure to cooperate. In the event that it is found that an insured is no longer totally disabled, the waiver of premiums shall cease as of the date of such finding and the policy of insurance may be continued by payment of premiums as provided in said policy: *Provided further,* That in any case in which the Administrator finds that the insured's failure to make timely application for waiver of premiums or his failure

to submit satisfactory evidence of the existence or continuance of total disability was due to circumstances beyond his control, the Administrator may grant waiver or continuance of waiver of premiums: *And provided further,* That in the event of death of the insured without filing application for waiver, the beneficiary, within one year after the death of the insured or the enactment of this amendment, whichever be the later, or, if the beneficiary be insane or a minor, within one year after removal of such legal disability, may file application for waiver with evidence of the insured's right to waiver under this section. Premium rates shall be calculated without charge for the cost of the waiver of premiums herein provided and no deduction from benefits otherwise payable shall be made on account thereof.

STATEMENT

Effective September 1, 1944, Captain Raymond C. Morrell was issued a policy of five year term National Service Life Insurance in the amount of $10,000, in which he designated as principal beneficiary Elizabeth C. Morrell, his wife, the respondent herein (R. 7). On March 29, 1946, the insured obtained a divorce from respondent (R. 6, 9).[1] Effective April 30, 1946, he discontinued his service pay insurance allotment by means of

[1] Shortly after the divorce, the insured married Mary Swann in violation of the divorce decree prohibiting remarriage within four months (R. 6). Following the insured's death, the divorce and remarriage were annulled on the petition of respondent (R. 6).

which he had theretofore paid his premiums, and as a result the policy lapsed for non-payment of premiums on May 31, 1946 (R. 7). From April 30, 1946, until his death on May 16, 1947, the insured paid no premiums either by allotment or by direct remittance to the Veterans Administration nor did he apply for reinstatement of the lapsed policy or for a waiver of premiums (R. 8).

Commencing October 2, 1945, and continuing until September 19, 1946, the insured was intermittently hospitalized in various service hospitals for a chronic arthritic condition (R. 7–8). He was on inactive military status from October 1, 1946, until January 17, 1947, when upon his application he was restored to active duty for an unlimited period (R. 8). The insured continued in an active duty status until May 16, 1947, when he died of heart failure resulting from arteriosclerosis with occlusion (R. 8).

On May 17, 1947, the day following the insured's death, respondent made written inquiry regarding her insurance rights and on July 21, 1947, submitted a formal application for the proceeds (R. 6).[2] In considering her claim, the Veterans Administration's Appeal Board determined that the insured had been totally disabled from October 2, 1945, until January 17, 1947, when he returned to active duty and, under Section 602 (n) of the

[2] The claim to the proceeds made by the insured's second wife, Mary Swann Morrell, was denied by the Veterans Administration on June 2, 1947, on the ground that respondent was named principal beneficiary in the policy (R. 6).

National Service Life Insurance Act, *supra*, pp. 2–4, was entitled to waiver of premiums from November 1, 1945, to February 1, 1947 (R. 7). The Appeal Board further found that the insured had been able and fit for active duty from January 17, 1947 to May 16, 1947, and ruled that since no premium had been paid from February 1, 1947, until the insured's death on May 16, 1947, the policy had lapsed (R. 8). In so holding, the Appeal Board recognized that the premiums paid by the insured between October 2, 1945, and April 30, 1946, were refundable, but refused to apply this credit as payment on the premiums due on and after February 1, 1947, since no instructions to that effect had been received from the insured (R. 8).

Following the Veterans Administration's rejection of her claim, respondent instituted this proceeding in the United States District Court for the District of Maryland. In addition to claiming that the insured was totally disabled from October 2, 1945, until his death,[4] the complainant alleged the foregoing facts and contended that the refund credit arising by reason of the posthumous determination of disability should be applied retroactively towards continuing the policy in force, despite the fact that the insured was already deceased (R. 1–2). Accepting respondent's conten-

[4] This contention was not pressed in the district court, no finding was made in respect thereto, and consequently, is no longer in issue in this case.

tion, the district court ruled that the Veterans Administration had erred in refusing to apply the refund credit to the premiums which became due February 1, 1947, and that, since the credit, so applied, was sufficient to keep the insurance in force until the insured's death, the beneficiary was entitled to the full face amount of the policy (R. 7–16).

The Court of Appeals affirmed, stating (R. 22):

> We see no reason why protection should not also be given to a policy holder who pays premiums during disability which are not due, but neglects to pay premiums which become due after his recovery. It then becomes the duty of the insurer under the general rule of insurance law to devote the funds of the policy holder to the payment of his debt, if they are sufficient for the purpose, and thus avoid a forfeiture. It goes without saying that the policy holder or his representative may have the money rather than the policy if he so desires; but that is not the case here, for the beneficiary has laid claim to the proceeds of the policy and the Veterans' Administration has determined the existence of the disability and the amount of the premium credit to which the insured was entitled.

REASONS FOR GRANTING THE WRIT

In the instant case, the insured discontinued payment of premiums contemporaneously with his obtaining what he thought was a divorce from respondent and, although he had become totally

disabled, he never applied for waiver. It was only after the insured's death that respondent—taking advantage of the insured's failure to remove her as his principal beneficiary, probably because he regarded a change of beneficiary to be an empty gesture since he had terminated the insurance—filed an application for waiver. As a result of this application, the Veterans' Administration determined that the insured had been entitled to a refund of those premiums paid while he was totally disabled, but ruled that, since there was no basis for implying the insured's consent, the premium credit could not be posthumously applied to pay premiums due subsequent to the termination of the disability in order to cure the lapse of the insurance.

In holding that the Government was obligated to pay respondent the full amount of the insurance, on the ground that, notwithstanding the insured's obvious lack of interest in the insurance,[4] the Government should have used the

[4] Every manifestation by the insured during his lifetime points to his desire not to continue the insurance; he discontinued his service-pay allotment after obtaining a divorce from respondent and remarrying; he failed to apply for reinstatement after the original lapse on June 1, 1946; and he failed to apply for new insurance upon his re-entry on active duty on January 17, 1947. There is no suggestion that the failure of the insured to file an application for waiver was "due to circumstances beyond his control." (Section 602 (n).) Cf. *Landsman* v. *United States*, 205 F. 2d 18 (C. A. D. C.), No. 336, this Term, petition for a writ of certiorari filed simultaneously herewith, on September 11, 1953.

unearned premium credit to pay premiums accruing after the termination of the insured's disability, the court below has failed to give effect to the plain provisions of the statute and the Veterans Administration's consistent administrative practice. In so doing, it has reached a result which conflicts in principle with decisions of other courts of appeals, improperly applies the principles of commercial insurance, and accords the beneficiary a right far greater than any right possessed by the insured during his lifetime. Since the ruling by the court below has an important impact on the administration of the National Service Life Insurance Act, review by this Court is fully warranted.

1. (a) Section 602 (n) of the National Service Life Insurance Act, *supra*, p. 3, expressly provides that "Any premiums paid for months during which waiver is effective shall be refunded." This provision makes it clear that the Veterans Administration has no authority over the disposition of the unearned premiums other than to hold them subject to instructions from the insured. Far from "merely serv[ing] to establish the policy holders' title to the fund," as suggested by the court below (R. 21), this provision operates to vest complete authority over it in the insured. Absent any indication from an insured as to what he wants done with it—and it is obvious in the instant case that the

insured did not and could not give any such indication since it was not known that he was entitled to the refund until after his death—the Veterans Administration may not dispose of the credit in any way, let alone as payments on subsequently accruing premiums. So to apply the premiums not only would effect a form of compulsory insurance contrary to the basic voluntary nature of the National Service Life Insurance Act (cf. *Williams* v. *Union Central Co.*, 291 U. S. 170, 179–181), but might render the Veterans Administration liable for the refund in the event that the insured should thereafter determine against continuing the insurance. And it certainly would not do to wait until the insured's death to determine whether the premiums should be refunded (if they were insufficient to keep the policy alive) or applied as the court has done (if they were adequate to extend insurance until death). See *infra*, pp. 18–20.

That the refundable premiums were not to be automatically applied to subsequent premiums is further evident from the fact that the second sentence in Section 602 (n), following that regarding refunds, provides that "In the event that it is found that an insured is no longer totally disabled, the waiver of premiums shall cease * * * and *the policy of insurance may be continued by payment of premiums as provided in said policy.*"

[Italics supplied.][4] Since Congress was undoubtedly aware that premium refunds would be due when a total disability terminated,[5] its deliberate inclusion of this provision for "payment of premiums as provided in said policy" plainly indicates that it regarded the refund credit as separate and distinct from premium payments and did not intend the refund to be applied automatically to the payment of subsequently accruing premiums.

Because it has regarded the refund credit as subject to the complete control of the insured, the Veterans Administration has, from the time of

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[4] The Veterans Administration has provided by regulation that (38 C. F. R. 8.42 (b)):

"In the event a finding that insured is no longer totally disabled is made at the same time a finding is made of total disability entitling the insured to a waiver of premiums while so disabled, the waiver of premiums shall cease as of the date on which total disability ceased and continuance of the insurance in such cases shall be subject to the timely payment of the premiums as they become or have become due and payable. The due date of the first premium payable subsequent to the date total disability ceased is the next regular due date of the premium under the policy, and if such premium was not paid within 31 days after the due date, the insurance lapsed."

[5] Since, under the statute, there could be no waiver until the insured had been continuously totally disabled for six or more months, and only then was the waiver retroactively applied to the commencement of the disability, it was almost unavoidable, particularly in continuous total disabilities of relatively short duration, that there be unearned premiums to be refunded when the disability terminated.

the enactment of the National Service Life Insurance Act, uniformly followed the practice of using the credit to continue unlapsed insurance in effect only when such use is expressly or impliedly authorized or directed by the insured; in the absence of such assent, the agency has uniformly refunded the unearned premiums.[7] In accordance with this practice, the Veterans Administration has held, on the one hand, that, where the insured has agreed to continue to pay premiums in his application for waiver, there was no basis for implying assent to the use of the refund credit to pay premiums and consequently that the insurance lapsed upon the insured's failure to pay premiums when due. See Administrator's Decision No. 745, dated May 20, 1947; Administrator's Decision No. 794, dated October 4, 1948. On the other hand, where there is a basis for implying assent, the agency has ruled that it was

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[7] Since at least 1946, the Veterans Administration has been using a form letter (FL 9–74) which, after notifying the insured of the period during which he was entitled to waiver, advised:

"Under this decision, you are entitled to a waiver only for the period specified and if your premiums are currently being paid, you should continue to pay them as they become due if you wish to keep your insurance in force. All unearned premiums will be refunded as promptly as possible."

Although there have been minor revisions in the form, the substance of the above has been continued unchanged.

not legally improper to apply the premium credit to pay premiums due after the termination of total disability. See Solicitor's Opinion No. 416-50, dated August 23, 1950; cf. Administrator's Decision No. 902, dated April 15, 1952.* Thus, contrary to the statement of the court below (R. 24), the Veterans Administration has followed the consistent practice of not automatically applying the refund credit to the payment of premiums, but rather of being guided by the wishes of the insured as to the disposition of the credit. Such a long standing administrative practice, which is in complete accord with the complex provisions of the statute, is not lightly to be overturned. *United States* v. *Henning,* 344 U. S. 66, 75; *United States* v. *Zazove,* 334 U. S. 602; *United States* v. *Citizens Loan Co.,* 316 U. S. 209; *United States* v. *Madigan,* 300 U. S. 500; *Norwegian Nitrogen Co.* v. *United States,* 288 U. S. 294, 315; *United States* v. *American Trucking Ass'ns.,* 310 U. S. 534, 549.

(b) The holding conflicts in principle with *Parker* v. *Veterans Administration of United States,* 193 F. 2d 149 (C. A. 5) and *Jones* v.

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* This opinion did not involve a refund premium credit arising under Section 602 (n), but rather the application of the excess in premium payments on one of two policies held by the insured toward premium payments on the second policy to avoid a lapse in the latter.

United States, 189 F. 2d 601 (C. A. 8).* In these cases, which involved the application of dividends to the payment of premiums, the courts of appeals held, contrary to the contentions of the beneficiaries, that dividends declared after the insured's death could not be retroactively applied as payment of unpaid premiums so as to continue in effect otherwise lapsed policies; these holdings were based on the ground that such application would be contrary to the Veterans Administration's regulations (193 F. 2d at 150; 189 F. 2d at 603).

The court below sought to distinguish these cases on the ground that "the terms of the statute and regulations expressly provided that dividends should be paid in cash only and should not be available to pay premiums." (R. 22.) But while the Veterans Administration's regulation (38 C. F. R. (1952 Supp.) 8.26a) contained the provisions outlined by the court, the particular provisions were not required by any stat-

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* See, also, *Weiss* v. *United States*, 187 F. 2d 610 (C. A. 2), certiorari denied, 342 U. S. 820, rehearing denied, 342 U. S. 874. The decision of the court below is also contrary to unreported district court decisions in *Rose Shaw* v. *United States*, No. 991 (N. D. Ind.), and *Minnie Mae Kubala* v. *United States*, No. 6678 (S. D. Texas), pending on appeal in the Court of Appeals for the Fifth Circuit. But see *Marie F. Levitch* v. *United States*, No. 2005–47 (D. C. D. C.) and *George Eddy* v. *United States*, No. 1921 (W. D. Wisc.).

utory mandate, for, at the time involved in those cases, there was no statutory provision dealing with dividends other than a general authorization to the Administrator to issue regulations on that subject. See Section 602 (f) of the National Service Life Insurance Act of 1940, 38 U. S. C. (1946 Ed.) 802 (f).[10] In the instant case, in contrast, there is an express statutory requirement that the premiums paid and unearned during a period of waiver "shall be refunded" and there has also been a consistent administrative practice that the refundable premiums are not to be used to pay premiums owed after the termination of the disability, without the assent of the insured. In these circumstances, the reasoning of the *Parker* and *Jones* cases plainly requires affirmance of the Veterans Administration's ruling here.

(c) The principles governing commercial insurance, even if it be assumed that they are applicable to government-provided insurance

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[10] By the Act of May 18, 1951, c. 94, 65 Stat. 43–44, Congress amended Section 602 (f) by adding the provision that after January 1, 1952, unpaid dividends should be used as payment of premiums becoming due on the insurance subsequent to the date the dividend is payable, until and unless the insured in writing requests payment in cash. 38 U. S. C., Supp. V, 802 (f). No such provision has been enacted in regard to refundable premiums.

under the National Service Life Insurance Act,[11] do not support the court's conclusion. The rule that a commercial insurer "is not justified in declaring a forfeiture of an insurance policy for the non-payment of premiums when at the time the premiums accrue, the insurer is indebted to the insured either for dividends declared or other funds belonging to the insured which it may have in its hands" (R. 22) is subject to the limitation that where the policy makes express provision for the disposition of the credit, the insurer is prohibited, unless directed to do so by the insured, from applying the credit in a manner contrary to this express provision, even though so to do would be advantageous to the insured or the

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[11] There is a substantial body of authority for the proposition that the principles of commercial insurance are not applicable to insurance under the National Service Life Insurance Act. See, *e. g.*, *United States* v. *Holley*, 199 F. 2d 575, 578 (C. A. 5); *James* v. *United States*, 185 F. 2d 115, 118–119 (C. A. 4); *Niewiadomski* v. *United States*, 159 F. 2d 683, 687–688 (C. A. 6), certiorari denied, 331 U. S. 850; *Mikell* v. *United States*, 64 F. 2d 301 (C. A. 4); *Birmingham* v. *United States*, 4 F. 2d 508, 509 (C. A. 8); *Crawford* v. *United States*, 40 F. 2d 199, 200 (C. A. 2); *Wilber Nat. Bank* v. *United States*, 69 F. 2d 526, 528 (C. A. 2), affirmed on other grounds, 294 U. S. 120; *United States* v. *Lyke*, 19 F. 2d 876 (C. A. 9); *United States* v. *Jackson*, 34 F. 2d 241 (C. A. 10), affirmed on other grounds, 281 U. S. 344; compare *Kontovich* v. *United States*, 99 F. 2d 661 (C. A. 6).

beneficiary.[12] Since Section 602 (n) is an integral part of the contract between the insurer and the insured (*United States* v. *Henning*, 344 U. S. 66, 75; *United States* v. *Williams*, 302 U. S. 46, 50; *White* v. *United States*, 270 U. S. 175; *Lynch* v. *United States*, 292 U. S. 571, 575), and since, as we have shown, Section 602 (n) deprives the Veterans Administration of any control over the fund's disposition, the instant case falls squarely within this limitation.

Moreover, the rule as applied to commercial insurers is based on the principle that "it would be inequitable for an insurance company to forfeit a policy when it holds funds belonging to the assured which are presently payable * * *." *American Nat. Ins. Co.* v. *Yee Lim Shee*, 104 F. 2d 688, 694 (C. A. 9). Before the rule may be applied, therefore, a fund or credit absolutely due and payable to the insured must exist at the time the premium, otherwise in default, accrues. *Long* v. *Monarch Accident Ins. Co.*, 30 F. 2d 929, 930–931

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[12] See, *e. g.*, *Williams* v. *Union Central Co.*, 291 U. S. 170; *State Life Ins. Co.* v. *Spencer*, 62 F. 2d 640, 643 (C. A. 5), certiorari denied, 289 U. S. 746; *Kansas City Life Insurance Co.* v. *Freeman*, 120 F. 2d 106, 108 (C. A. 5); *Equitable Life Assur. Soc.* v. *Roberts*, 226 Ala. 8; *Gardner* v. *National Life Ins. Co.*, 201 N. C. 716; *Harden* v. *Occidental L. Ins. Co.*, 206 N. C. 230.

(C. A. 4). In the instant case, the refund credit did not come into being until after the insured's death, since it was only then that it was determined that he had been totally disabled. By that time, the default in payment of the premiums due subsequent to the termination of the disability had long since accrued. Thus, the commercial insurance rule is not controlling here for the further reason that the conditions for its application have not been satisfied.

2. The court also erred in holding that the requisite consent to the application of the refund to payment of premiums, if necessary, could be and had been given by the beneficiary after the insured's death. According to the court, the consent could be given by the beneficiary since she "stands in his [the policy holder's] place under the statute as the moving party in this case" (R. 22).

But the beneficiary more than stands in the place of the insured when she is permitted posthumously to elect to apply the premium credits toward the payment of premiums due during the interval between the termination of the insured's total disability and his death; the beneficiary is thereby given a right far beyond any had by the insured. While the insured, had waiver been granted during his lifetime, might have elected to have the credit used to pay subsequently due premiums, that election would necessarily be made prior to the materialization of the risk covered

by the insurance and without any guarantee that the premium credit would be sufficient to keep the insurance in force until his death. Such a right necessarily terminates with the maturing of the contract upon the insured's death.

In contrast, the beneficiary's right of election accorded by the court below is exercisable only after the insured's death, for only at that time does the beneficiary have rights in regard to the insurance contract. Yet at that time, the risk protected by the insurance has matured and the period between the termination of the disability and the insured's death is fixed; the beneficiary may by simple arithmetic determine whether to elect to apply the premium credit to unpaid premiums. Such a right not only exceeds the right of the insured but violates the basic concept of insurance, that of providing protection against future contingencies.

There is nothing in the National Service Life Insurance Act to support such a right in the beneficiary. The sole right accorded to the beneficiary by Section 602 (n) is to apply for a waiver of premiums for continuous total disability when the insured failed to do so during his lifetime. This right in no way dispenses with the other provisions of Section 602 (n), nor does it, we submit, confer upon the beneficiary the far different and greater right found by the court below. Cf. *Scott* v. *United States*, 189 F. 2d 863, 864 (C. A. 5), certiorari denied, 342 U. S. 878; see, also, *United*

States v. *Baker*, 191 F. 2d 1004, 1006 (C. A. 10); *Hendricks* v. *United States* 94 F. Supp. 142 (E. D. Tenn.).

Nor does the legislative history provide any basis for inferring such a right. As originally enacted in 1940, Section 602 (n) confined the right to apply for waiver to the insured. 54 Stat. 1011. The provision allowing the beneficiary to apply for waiver, where the insured had died without submitting an application therefor, was enacted in 1944 upon the recommendation of the Veterans Administration. Section 7 of the Act of September 30, 1944, c. 454, 58 Stat. 762, 764. The reason for the change, as stated in the Veterans Administration's letter of recommendation, was as follows: "* * * Under existing laws waiver of premiums cannot be granted except upon application by the insured. In certain cases it appears that failure to make timely application was due to the mental incompetency of the insured and in case the insured died without filing application, waiver could not be granted on application made by the beneficiary. The proposed amendment * * * would authorize application for waiver of premiums to be made by the beneficiary." S. Rep. No. 1105, 78th Cong., 2d Sess., p. 3; 90 Cong. Rec. 6146. The committee report on the 1944 bill incorporated the explanatory letter of the Veterans Administration. S. Rep. No. 1105, 78th Cong., 2d Sess.; 90 Cong. Rec. 7983.

3. The question presented is of continuing importance in the administration of the National Service Life Insurance Act. Not only has the problem already been raised in several district court cases (see fn. 9, p. 14, *supra*), but the Veterans Administration advises that the problem frequently arises before it. See *supra*, pp. 11–13. While precise information as to the number of such cases is not available, that agency has made a survey of 500 applications for waiver of premiums, selected at random, in which "total disability had been claimed or had been found to have terminated prior to the decision granting or denying waiver." This survey revealed that in one out of every eight cases "the possibility exists of applying refundable premiums to subsequently accruing premiums and it is fair to state that a substantial number of them would involve cases in which the insurance had already lapsed prior to the date of the decision." Applying these figures to the 39,154 waiver of premium cases decided in the last two fiscal years, the Veterans Administration estimates that about 5,000 involved applications for waiver, or decisions thereon, where the period of total disability terminated before the date of decision and "a substantial number, perhaps some figure between one-fifth and one-half, involved cases in which lapse had occurred." The agency further advises that "the number of such cases would be at least as large, probably larger, during the preceding

four years," and further that "it seems reasonable to expect that future experience will be of substantially the same character." In these circumstances, the instant case is an appropriate one for review by this Court.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be granted.

ROBERT L. STERN,
Acting Solicitor General.

SEPTEMBER, 1953.

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HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1953

No. 337

UNITED STATES OF AMERICA,
Petitioner,

vs.

ELIZABETH C. MORRELL,
Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT.

HERBERT E. WITZ,
Attorney for Respondent.

The Daily Record Co., Baltimore 3, Md.

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